

MARTIN MATTLER

IBLA 81-269

Decided March 26, 1981

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying a petition for reinstatement of oil and gas lease U-41028.

Affirmed.

1. Oil and Gas Leases: Termination

Upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease automatically terminates by operation of law.

2. Oil and Gas Leases: Termination -- Oil and Gas Leases:
Reinstatement

A lessee may be entitled to reinstatement of the lease if it is shown, among other things, that reasonable diligence was exercised in mailing the payment, or that the delay in remitting the rental is justifiable. Where a lessee is unable to make the requisite showing, a petition for reinstatement is properly denied.

3. Oil and Gas Leases: Termination -- Oil and Gas Leases:
Reinstatement

Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence.

4. Oil and Gas Leases: Termination -- Oil and Gas Leases:
Reinstatement

A late rental payment or an insufficient tender of rental may be justifiable if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy notices, and similar occurrences do not excuse a failure to exercise due diligence.

APPEARANCES: Martin Mattler, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Martin Mattler appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated January 8, 1981, denying appellant's petition for reinstatement of oil and gas lease U-41028. The lease in question was issued effective October 1, 1978, for a period of 10 years. 1/

1/ In appellant Mattler's statement of reasons on appeal, Mattler states that he and Robert Gamble are the only two parties to the lease.

[1] Appellant's petition followed BLM's notification to appellant on October 7, 1980, that lease U-41028 had terminated automatically by operation of law on October 1, 1980, for failure to pay in advance the rental due on this lease. This termination was in accordance with 30 U.S.C. § 188(b) (1976) which provides in part: "[U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law."

[2] Where a lease has been terminated automatically by operation of law for failure to make timely payment of the full amount of rental due, but such rental was paid or tendered within 20 days thereafter, the Secretary may reinstate the lease if, inter alia, it is shown to the satisfaction of the Secretary that such failure to make timely payment was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976).

[3] In appellant's case, a check for the full amount of rental due was written on October 1, 1980, and received by BLM on October 6, 1980. Reasonable diligence generally requires mailing the rental payment sufficiently in advance of the anniversary or due date to account

fn.1 (continued)

BLM notes, however, that there are three record titleholders of oil and gas lease U-41028. They are Robert Gamble, Melbourne Concept, Inc., and appellant. The assignment of a one-third interest from Mattler and Gamble to Melbourne Concept, Inc., was approved by BLM effective November 1, 1979.

for normal delays in collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2).

Appellant's payment envelope, however, was postmarked on the date payment was due. This Board has repeatedly held that mailing the rental payment 1 day before or on the anniversary date of the lease does not constitute reasonable diligence. See, e.g., Ronald C. Hill, 38 IBLA 315 (1978); J. R. Oil Corp., 36 IBLA 81 (1978); Hubert W. Scudder, 36 IBLA 191 (1978); David R. Smith, 33 IBLA 63 (1977); Adolph F. Muratori, 31 IBLA 39 (1977); Henry Carter, 24 IBLA 70 (1976).

[4] A failure to make timely payment may be justifiable, however, if it is demonstrated that at or near the anniversary date there existed sufficiently extenuating circumstances outside the lessee's control which affected his or her actions in paying the rental fee. See cases hereinbefore cited. Generally, this standard contemplates occurrences such as injury, David Kirkland, 19 IBLA 305 (1975); or illness, Billy Wright, 29 IBLA 81 (1977); or death, Fredres E. Laubaugh, 24 IBLA 306 (1976). Instances of simple forgetfulness, inadvertence, ignorance of the regulations, reliance on BLM courtesy billing notices, and similar occurrences do not excuse lack of diligence. Similarly, appellant's absence from the country and general unfamiliarity with the leasing process do not rise to the level of justification. Benjamin T. Franklin, 38 IBLA 291 (1978).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

